

THIS INSTRUMENT PREPARED BY:

LEONARD LUBART, ESQUIRE

GREENSPOON MARDER, P.A.

Trade Centre South, Suite 700

100 West Cypress Creek Road

Fort Lauderdale, Florida 33309

**SHARED USE AGREEMENT**

THIS AGREEMENT, made and entered into this 1<sup>st</sup> day of August, 2007 by and between THE LODGE AT WESTGATE PARK CITY RESORT & SPA CONDOMINIUM ASSOCIATION, INC., a Utah non-profit corporation (hereinafter referred to as the "Condominium Association"), WESTGATE PARK CITY RESORT & SPA OWNERS ASSOCIATION, INC., a Utah non-profit corporation (hereinafter referred to as the "Timeshare Association"), and WESTGATE RESORTS, LTD., a Florida limited partnership (hereinafter referred to as "Developer"). The Condominium Association and the Timeshare Association shall be referred to collectively as the "Associations."

**PRELIMINARY RECITALS**

A. The Developer has created a mixed- development consisting of a timeshare regime, retail, and resort whole ownership upon the property described on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Master Parcel"; and

B. Portions of the Master Parcel known as Buildings 10 and 11 have been submitted to a timeshare form of ownership (hereinafter referred to as the "Timeshare Project") pursuant to that certain Declaration of Covenants, Conditions and Restrictions recorded on the 28th day of March, 2002 as Entry No. 614781 in Book 1442 at Page 1, of the Official Records; as amended by Amendment recorded on the 26th day of March 2003 as Entry No. 652526 in Book 1521 at Page 700, of the Official Records, said amendment being re-recorded on July 28, 2005 as Entry No. 744930 in Book 1719 at Page 1956 of the Official Records; as amended on February 3, 2004 as Entry No. 687940 in Book 1597 at Page 338 of the Official Records; as amended on January 23, 2006 as Entry No. 766325 in Book 1766 at Page 1157 of the Official Records; as amended on March 5, 2007 as Entry No. 806270 in Book 1851 at Page 648 of the Official Records; and as amended on March 5, 2007 as Entry No. 8062671 in Book 1851 at page 659 of the Official Records (hereinafter referred to as the "Timeshare Declaration"), as amended from time to time; and

C. A portion of the Master Parcel known as Building Number 19 has been submitted to a condominium form of ownership (hereinafter referred to as the "Condominium Project") pursuant to that certain plat for The Lodge at Westgate Park City Resort and Spa, a condominium, recorded on June 19, 2007 as Entry No. 818012, in Book 1874 at Page 478 of the Official Records (the "Condominium Plat"); and that certain Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions for The Lodge at Westgate Park City Resort and Spa, a condominium, recorded on June 29, 2007 as Entry No. 818013, in Book 1874,

at Page 479 of the Official Records, as amended from time to time (hereinafter referred to as the "Condominium Declaration"); and

**D.** The Developer has retained ownership of a portion of the Master Parcel which is not included within the Timeshare Project or the Condominium Project, and in addition thereto, the Developer is the owner of the Developer Retained Property as defined in the Timeshare Declaration, and the Commercial Unit as described in the Condominium Plat and the Condominium Declaration (all of which is more particularly described on Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as the Developer Controlled Property)).

**E.** Located within the Developer Controlled Property are the parking garage, electrical panels, air conditioning chillers, boilers, conduits, heating equipment, water, sewer, telephone, cable television, garbage disposal; and other recreational and other commonly used facilities, including the lobby, library, lounge, indoor-outdoor swimming pool, steam room, sauna, outdoor jacuzzi, skier services and ski lockers, tennis court, basketball court, playground, an additional parking garage and swimming pool (which is now under construction), and common walkways, paths, and landscaping; and, in addition, certain portions of the Developer Controlled Property may share party or common walls, roof structures, foundations and building facades, with the Timeshare Project and Condominium Project (hereinafter referred to as the "Shared Amenities.")

**F.** The Developer desires to grant in favor of each of the Associations, and their members a right of access, ingress, egress, and use of the Shared Amenities, subject to the terms, conditions and limitations set forth herein, and subject further to the obligation of the Association to pay their respective proportionate share of the costs and expenses incurred in connection with the operation, maintenance, upkeep and repair of the Shared Amenities as more particularly set forth herein.

**NOW THEREFORE**, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals.** The Preliminary Recitals as set forth above are incorporated herein and are made a part hereof.

2. **Terms.** The terms not otherwise defined herein shall have the meanings as set forth in the Timeshare Declaration, the Condominium Declaration and the Condominium Plat if so defined, unless the context clearly requires otherwise.,

3. **Easements in Favor of the Associations for Utilities, Ingress, Egress and Support.** Developer hereby grants to the Associations, their members and any other authorized

{JA333546;1}

users pursuant to the applicable provisions of the Timeshare Declaration and the Condominium Declaration ("Authorized Users") the following non-exclusive perpetual easements of access, ingress and egress over portions of the Developer Controlled Property necessary to use and enjoy the Shared Amenities as follows:

- a. An easement of access, ingress and egress over and through such portions of the Developer Controlled Property as may be necessary to provide access to the Condominium Project and the Timeshare Project, including, but not limited to, an easement for access, ingress and egress to all stairwells, and elevators for the purpose of having access, ingress and egress to the Condominium Project and the Timeshare Project, specifically excluding any portion of the Developer Controlled Property designated for the exclusive occupancy by the Developer from time to time.
- b. An easement of access and use of all Shared Amenities and an easement for use of the elevator shafts and every other means of access to all portions of the Condominium Project and the Timeshare Project.
- c. An easement of subjacent and lateral support and all other support in every portion of the Developer Controlled Property which contributes to the support of the Condominium Project and Timeshare Project.

4. **Easements in Favor of Developer - Utilities - Support.** The Developer, its successors, assigns, licensees and grantees shall have a non-exclusive perpetual easement of access, ingress and egress through such portions of the Condominium Project and the Timeshare Project as may be necessary to have access to all portions of the Developer Controlled Property. Such easement shall include access, ingress and egress to all stairwells, elevators and utilities for the provision of water, gas, electricity, telephone as well as sewage lines presently existing, or hereafter constructed and including all facilities for the delivery of cable telephone, air conditioning, heating and garbage disposal. The Developer, its successors, assigns, licensees and grantees shall also have a non-exclusive perpetual easement of subjacent and lateral support and all other support in every portion of the Condominium Project and the Timeshare Project which contributes to the support of the Developer Controlled Property.

5. **Cross Easements.** In addition to any other easements which have otherwise been granted pursuant to the Timeshare Declarations or the Condominium Declaration, the Associations and the Developer, jointly and severally, hereby grant and declare in favor of the other for the benefit of the any Authorized User and the Developer, its successors or assigns, a non-exclusive perpetual easement for access, ingress and egress over portions of the Master Parcel as may be necessary for (i) access to the Units, as defined in the Timeshare Declaration and Condominium Declaration, (ii) maintenance, repair, or reconstruction of any portion of the Master Parcel; and (iii) as may be necessary to have access and use of the Shared Amenities. To

(JA333546;1)

the extent any of the Shared Amenities have adjoining party walls, the Developer and Associations, as the case may be, grant and declare an easement of subjacent and lateral and structural support in all common or party walls, roof structures, foundations, building façade or any other adjoining structures. Subject to the payment by the Associations of their respective proportionate shares as set forth in paragraph 7 hereof, it shall be the obligation of the Developer to maintain all such shared or adjoining party walls for the benefit of both Developer and the Associations (and their members and other Authorized Users). Except for any damage or destruction caused by the negligence or misconduct of any particular party, the cost of maintenance and repair of all damage, destruction, and routine wear and tear to all adjoining party walls shall be separately charged by Developer to the applicable Association with which Developer shares such party wall and shall be split equally by such Association and the Developer. Each Association shall pay all invoices or bills received from Developer for maintenance, repair or reconstruction of adjoining party walls within thirty (30) days from the date when such bill or invoice is received by that Association. To the extent that any Unit, or any other portion of the Condominium Project encroaches on any portion of the Developer Controlled Property, whether by reason of any deviation from the plats or plans relating to either such property, or in the construction, repair, renovation, restoration or repair of any improvement (including any adjoining party wall) or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall automatically exist in favor of the Association and all owners of Units in the Condominium Project.

**6. Easements in Favor of Associations for Use of Shared Amenities.**

The Developer does hereby grant, declare, create and establish in favor of the Associations and their members, easements over portions of the Developer Controlled Property as may be necessary to utilize and enjoy the Shared Amenities, subject to the following:

a. parking shall only be in areas designated by the Developer from time to time; and,

b. any part of the Developer Controlled Property whether located in the Timeshare Project, the Condominium Project, or the Master Parcel which has not been designated herein as a Shared Amenity shall be reserved for use by the Developer, unless such areas otherwise made available generally to the public or members of the Timeshare Project or Condominium Project as determined from time to time by Developer in its sole direction.

c. the Developer reserves the right to change the designation of portions of the Developer Controlled Property and to designate additional areas or facilities as Shared Amenities, and in connection therewith, to make appropriate adjustments to this Agreement, including, but not limited to, Paragraph 7 in accordance therewith; provided that no such change by Developer shall reduce or diminish the Shared Amenities (or any portion thereof) or materially and adversely modify or alter the easement or use rights granted hereunder, without the prior written consent of both Associations. In addition, the Developer reserves the right to convey any portion of the Developer Controlled Property to either of the Associations at any time, and such Association shall

{JA333546;1}

be obligated to accept such conveyance whereupon such Association shall be responsible for all fees and costs in connection therewith.

d. the foregoing easements shall be specifically subject to rules and regulations as may be established and adopted from time to time by the Developer in its sole discretion and shall be further conditioned upon payment by the Associations of their prorata share of the costs and expenses incurred in the operation, maintenance, and management of the Shared Amenities as referenced herein pursuant to the terms and conditions hereinafter set forth. It is specifically understood and agreed that the Developer, its successors, and assigns shall have the full right and authority to control and manage the Shared Amenities subject to the rights and easements herein granted.

7. **Maintenance Obligations of the Developer and the Associations.** The Developer, or the management firm or master association designated by the Developer, in Developer's sole discretion, shall maintain, operate, repair and replace the Shared Amenities. However, notwithstanding anything herein to the contrary, in the event that any lender becomes the legal owner, through foreclosure or otherwise, of any portion of the Shared Amenities ("Lender Controlled Property"), then such lender shall fully assume from the Developer all of Developer's responsibility hereunder to maintain the Lender Controlled Property. Any lender that possesses Lender Controlled Property in accordance herewith may contract with any party, in that lender's sole discretion (including Developer or any affiliate or subsidiary of Developer), to perform any maintenance obligations of lender for the Lender Controlled Property. All contracts between Developer and any other party to maintain the Shared Amenities in accordance with this Agreement must be fully terminable in relation to any portion of the Shared Amenities that becomes Lender Controlled Property. Developer shall be obligated to assign to such lender that owns any Lender Controlled Property all other rights and privileges of Developer under this Agreement, including any lien rights or the right to have assigned to Developer any lien rights, in relation to the Lender Controlled Property owned by that certain lender.

The cost and expenses incurred in connection with the foregoing shall be shared by the Developer and the Associations as follows:

a. All costs and expenses incidental to the maintenance, operation, repair, and replacement of the Shared Amenities shall be assessed against each Association in proportion to which the square footage of all living units contained within the Timeshare Project and the Condominium Project bears to the total square footage of all living units in both the Timeshare Project and the Condominium Project. The Associations shall assess their respective unit owners, including the Developer, for their respective share of such expenses in accordance with the provisions set forth in the Timeshare Declaration and Condominium Declaration for allocating and making assessments of common expenses. Such costs shall include, but not necessarily be limited to, insurance, taxes, labor, administrative personnel, reasonable reserves, and a Developer administrative fee equal to 15% of the total of such costs.

{JA333546;1}

Shared Use Agreement

b. In the event that Developer defaults in its obligation to maintain the Shared Amenities as required hereunder and if such default is not cured after sixty (60) days written notice to Developer by any Association or Authorized User of such default, then the Associations (on behalf of themselves or any aggrieved Authorized User) may, but are not obligated to, perform any such required maintenance, including any reconstruction or repair deemed necessary by the Associations. In the event of any self-help by the Associations in accordance herewith, the Associations shall bill the Developer the Developer's proportionate share under the Timeshare Declaration and Condominium Declaration, both as the owner of any Timeshare Weeks, Condominium Units, or the Commercial Units. The Developer shall be obligated to pay such sum within thirty (30) days of the receipt of the invoice on same. In addition to the foregoing, the Associations, jointly and severally, shall be entitled to pursue any and all legal remedies they may have against Developer in connection with Developer's failure to maintain the Shared Amenities. Easements over and through all portions of the Master Parcel are reserved to the Associations for the purpose of enforcing the Associations' right of self-help under this Section 7.b., and the Associations may only enter any portion thereof to remove or remedy any defaults by the Developer. If the Associations, after notice to Developer of any default in accordance herewith and Developer's continued failure to cure the same, do in fact exercise their right to cure such defaults, the Developer's proportionate share as set forth above shall become a charge and continuing lien against the Developer's interest in the Developer Controlled Property as well as an individual and personal obligation of the Developer; provided, however, that nothing in this Section shall be construed to require Associations to take any action to enforce their rights under this Section 7.b.

c. Notwithstanding anything contained herein to the contrary, the obligation of the Associations for the costs and expenses set forth herein shall apply irrespective of the fact that some or all of these systems and equipment referenced herein, including electrical, mechanical, water, plumbing, sewage and other systems shall not be contained within the boundaries of the Condominium Project or the Timeshare Project. The Developer reserves the right to separately meter any or all utilities in order to carry out the purposes and intentions hereof.

d. For all years subsequent to the first fiscal year of the Associations (the first fiscal year being the period commencing with the recording of this Agreement through December 31<sup>st</sup> of that year, with the understanding that the first fiscal year may be a partial year, or such other fiscal years may be adopted by the Associations as the first fiscal year), the Developer shall provide to the Associations, within thirty (30) days following the end of any such fiscal year, an estimated operating budget for the Shared Amenities, for the expenses described above for the ensuing year of the Associations, together with a statement of expenditures for all such expenses incurred by the Developer in the maintenance of such areas for the proceeding fiscal year of the Associations. The Associations shall have ten (10) days from the delivery of said notice by the Developer in which to approve or reject the budget provided by the Developer, or, in the alternative, to suggest an alternative budget. Failure of the Associations to

{JA333546;1}

respond, in writing, within said ten (10) day period shall be deemed to be an approval by the Associations of the assessment. In the event the budget as proposed by the Developer is not approved by either Association as set forth herein, the Associations shall continue to pay the assessments applicable for the previous year. The Developer shall in its sole discretion be entitled to increase the total assessment by a sum not to exceed **fifteen (15%) percent** of the previous years assessments until such budget has been approved, as provided herein, by the Associations in order to cover any projected deficits.

e. In the event an Association does not approve the budget, the matter shall be submitted for binding arbitration in accordance with the rules of the American Arbitration Association. Each party shall select one (1) arbitrator, and these two (2) arbitrators shall select a third arbitrator. The arbitrators must adopt either the budget proposed by the Developer or the budget proposed by the objecting Association in its entirety and shall have no discretion to alter either budget nor make any compromise in its decision, unless agreed to by both parties. The same procedure shall apply with respect to objections by an Association to a special assessment as provided below. The arbitration provisions contained herein shall be strictly limited to the items set forth herein and shall not apply to any other provisions of this Easement Agreement. In the event that only one Association objects to the budget or the special assessment, the non-objecting Association shall also be a party to the arbitration.

f. In the event the Developer shall, at any time (except during the first fiscal year of the Associations) determine that the estimated amount assessed to the Associations for use of the Easements and for Shared Amenities is insufficient to pay the actual maintenance cost thereof (including reserves), the Developer shall immediately notify the Associations of the deficit and request the Associations to approve a special assessment in order to pay the deficit. The Associations shall approve or reject the special assessment within fifteen (15) days of delivery of notice thereof by the Developer. Failure of the Associations to respond in writing within the fifteen (15) day period shall be deemed to be an approval of the Associations of the assessment. The special assessment shall be payable by the Associations within thirty (30) days of approval, as provided for herein.

g. All payments (except special assessments, which are due as provided for in the notice of special assessment) required to be made hereunder by the Associations to the Developer, shall be payable by the Associations on a monthly basis, all payments due in advance on the first day of each month.

h. Notwithstanding anything contained herein to the contrary, the Developer shall not be required to subsidize any deficits caused by an insufficiency in the budget, including but not limited to a failure by the Associations to approve any operating budget proposed by the Developer or to approve any special assessment proposed by the Developer. In this regard it is understood that the Developer, its successors and assigns shall not be liable to the Associations nor any member of the Associations for a lack of adequate service or for failure to properly maintain

(JA333546;1)

Shared Use Agreement

the Shared Amenities in the event the Associations fails to approve the budget proposed by the Developer or any special assessment.

i. In addition to the budget referenced herein, Developer may at its option provide to the Associations a separate budget for the costs and expenses set forth herein or may provide for such items of expense to be directly billed to the Associations if, as, and when necessary.

8. **Failure to Pay Assessments.** In the event an Association shall fail to pay the assessments established and assessed in accordance with the terms hereof, or shall fail to pay such other sums as may be due and payable in accordance with the terms of this Agreement, that Association shall be deemed to be in default and, with the exception of those rights relating to utilities, Developer shall be entitled to immediately revoke or suspend any and all rights granted to the Developer hereunder.

The Developer shall have a lien on each Unit in the Condominium and the Timeshare Resort for unpaid assessments and other charges, with interest thereon and for reasonable attorneys' fees incurred by the Developer incident to the collection of the assessment or other charge and the enforcement of any lien. The lien shall be effective from and after the recording of a Claim of Lien in the Public Records of Summit County, Utah. In the event some, but not all, members in either the Timeshare Association or Condominium Association fail to pay the required assessments, the Associations shall nevertheless remit the sums which have actually been collected pursuant to this Agreement. The Associations shall thereafter adopt as soon as practical, according to the provisions of the Timeshare Declaration and Condominium Declaration, special assessments against all members of the respective Associations to cover the shortfall. In addition to all other remedies, the Associations shall assign the liens against delinquent members and, in addition thereto, the Developer shall have direct liens which may be levied by the Developer against all members in the Associations. The Developer may enforce the Associations' lien rights in accordance with applicable law. The Developer may bring an action in its name to foreclose a lien for assessments or other charges in the manner a mortgage on real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments or charges without waiving any Claim of Lien. The remedies provided herein shall be non-exclusive and cumulative and shall not exclude any other remedy available to the Developer by this Agreement, law or otherwise. In addition to all other legal or equitable remedies, with the exception of those rights relating to utilities, the Developer may also suspend the use rights of a Timeshare or Condominium owner who is in default in the payment of his or her assessments. In this regard, upon request by Developer the Associations shall provide Developer with a report listing all Timeshare and/or Condominium owners who are delinquent in the payment of their assessments, unless otherwise prohibited under any applicable law or regulation.

9. **Maintenance of Color Scheme.** The exterior portions of the Developer Controlled Property shall be cleaned, repainted or retained by the Developer with substantially the same colors as initially used as often as is necessary to maintain same in a neat, orderly and attractive manner.

{JA333546;1}

The expense of maintaining the exterior portions of the Condominium Project and the Timeshare Project shall be borne by their respective Associations, and the expense of maintaining the exterior portions of the Developer Controlled Property shall be borne by the Developer.

10. **Developer's Right to Make Any Legal Use of Property.** It is understood and agreed that the Developer shall have the right in its sole discretion to make any legal use of the Developer Controlled Property including, but not limited to the right to further improve the Developer Controlled Property, including the expansion or construction of additional recreational facilities and further including the construction of additional buildings upon the Developer Controlled Property, which may include, but not necessarily be limited to condominiums, apartments, co-operatives, commercial buildings, hotel units, timeshares or any other structure authorized by applicable zoning requirements now existing or hereafter adopted; provided that no such use by Developer shall reduce or diminish the Shared Amenities (or any portion thereof) or materially alter the use rights granted to the Associations and the Timeshare and Condominium owners herein. In this regard it is further agreed that the Associations and each member of the Associations shall be deemed to have consented to such additional construction, improvements, or use and shall as a condition to the use rights and easements granted herein by the Developer in favor of the Associations and its members consent to any building permit application by the Developer or application for a change in zoning or any necessary variance deemed necessary by the Developer in furtherance of the terms hereof.

It is further understood and agreed that in the event the Developer further improves the Developer Controlled Property which may include the additional construction of units, neither the Associations nor any unit owner shall have a right to object nor shall have any cause of action against the Developer as a result of any visual obstruction caused by the construction of additional units.

It is further understood and agreed that during any period of construction, improvements or expansion of the Property, the Developer may temporarily suspend use of the Shared Amenities, and such use shall be restored upon the completion of any improvements constructed upon the property. During any period of temporary suspension, all fees due from the Associations to the Developer shall be likewise suspended except with respect to the payment of the Associations' pro-rata share of real estate taxes and insurance, and except to the extent that portions of the Easements and the Recreational and Other Commonly Used Facilities continue to be available for use by the Associations and their members.

11. **Insurance.** The Developer shall maintain all necessary and adequate insurance coverages, including liability, hazard, and fire insurance, on all portions of the Shared Amenities, and each Association and the Developer shall be named as insureds. The cost of such insurance shall be a shared expense pursuant to the provisions of paragraph 7. Notwithstanding anything contained herein to the contrary, the Timeshare Association shall maintain such insurance coverage for the Timeshare Project as is required by the Timeshare Declaration, and the

{JA333546;1}

Condominium Association shall maintain such insurance for the Condominium Project as is required by the Condominium Declaration. The Associations and the Developer may enter into an agreement to provide for a single insurance policy covering the Timeshare Project, the Condominium Project, and the Developer Controlled Property, with the cost of such insurance to be allocated by agreement of the parties.

In the event of casualty to the Shared Amenities, Developer or the owner of the Commercial Unit in the Condominium Project (if different than Developer) shall be obligated to restore/rebuild the Shared Amenities using the insurance proceeds received in connection therewith. In the event that the cost to restore/rebuild the Shared Amenities exceeds the insurance proceeds, the Associations shall be assessed for the shortfall in accordance with the provisions of Paragraph 7 hereof. The Developer shall not be obligated to restore/rebuild the Shared Amenities in the event that (1) both Associations elect, in accordance with their respective Declarations, not to restore/rebuild the Shared Amenities; or (2) the cost to restore/rebuild the Shared Amenities exceeds the insurance proceeds and the Associations fail to pay to Developer the shortfall. In no event shall Developer be obligated to advance any funds required to restore/rebuild the Shared Amenities, other than any portion allocated to the Developer under Section 7 hereof or to the Developer as a member of an Association.

12. **Indemnification.** Developer shall not be liable for any damage or injury to any persons or property whether it be the person or property of the Associations or Unit Owner, or any employees, agents, guests or invitees thereof, by reason of Associations occupancy and use of the Shared Amenities on any of the portions of the Developer Controlled Property or because of fire, flood, windstorm, acts of God or for any other reason. The Associations and each unit owner agrees to indemnify and save harmless the Developer from and against any and all loss, damage, claim, demand, liability or expense by reason of damage to person or property, which may arise or be claimed to have arisen as a result of the occupancy or use of the Shared Amenities on any of the portions of the Developer Controlled Property by the Associations or any unit owner or by reason thereof or in connection therewith, or in any way arising on account of any injury or damage caused to any person or property on or in Shared Amenities on any of the portions of the Developer Controlled Property from and against the claims of all persons claiming by, through or under Developer.

13. **Assignment.** It is understood that the Associations shall not assign its rights or obligations under this Agreement, or any part thereof, without the prior written consent of Developer.

Developer may assign its rights and/or obligations under this Agreement to any other party provided such party first agrees in writing to be bound by all terms and conditions set forth herein. Developer may establish a "Master Association", which shall be a Utah non-profit corporation, in order to assume management and control of the recreational facilities, pursuant to the terms and provisions of this Agreement. Notwithstanding the foregoing, the Developer shall be entitled to assign the rights which might otherwise inure to the members of the Condominium

{JA333546;1}

Shared Use Agreement

10

00824052 Page 10 of 22 Summit County

Association to any lender providing construction financing for construction of any of the Shared Amenities or Condominium Units as depicted on the Condominium Plat.

In lieu of the creation of a Master Association the Developer may designate a manager to perform management services with respect to the Easements and the Recreational and Other Commonly Used Facilities designated herein which management firm may be the same management firm employed by the Associations. The Developer and the Associations hereby consent and agree that the Associations and the Developer may employ the same management firm and that such management firm shall have an independent fiduciary duty to each party.

14. **Condemnation.** In the event the whole or any part of the Developer Controlled Property shall be taken or condemned for any public or quasipublic use or purpose, or is taken by private purchase in lieu of condemnation, the proceeds of any such condemnation of any portion of the Developer Controlled Property shall be payable to the owner of that portion of the Developer Controlled Property.

15. **Waiver of Warranty.** To the maximum extent lawful, Developer hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Developer Controlled Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute and all other express and implied warranties of any kind or character. The Associations represents and warrants to Developer that, in deciding to enter into this Easement Agreement, the Associations relied solely on its independent inspection of the Developer Controlled Property and has not received nor relied on any warranties and/or representations from Developer of any kind, other than as expressly provided herein. Without limiting the generality of the foregoing and to the maximum extent permitted by laws, warranties, if any, on appliances, water heaters, and HVAC systems furnished with or serving the Developer Controlled Property or the Condominium Project are manufacturers warranties only and the Associations agrees to be limited to the manufacturer's warranties for any relief pertaining to the breach of any express or implied warranty of merchantability or fitness.

As to any implied warranty which cannot be disclaimed entirely, all secondary, incidental and consequential damages are specifically excluded and disclaimed (claims for such secondary, incidental and consequential damages being clearly unavailable in the case of implied warranties which are disclaimed entirely above).

{JA333546;1}

For as long as Developer remains liable under any warranty, whether statutory, express or implied, for acts or omissions of Developer in the development, construction, sale, resale, leasing, financing and marketing of the Condominium, the Timeshare Resort or the Developer Controlled Property, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Associations and/or any Unit Owner and without requiring any consideration to be paid by the Developer to the Unit Owners and/or the Associations (provided, however, that absent an emergency situation, the Developer shall provide reasonable advance notice), to enter the Condominium Project and the Timeshare Project, including the Units, Common Areas and Facilities (as defined in Condominium and Timeshare Declarations) and Limited Common Areas and Facilities (as defined in the Condominium and Timeshare Declarations, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The failure of the Associations or any Authorized User to grant, or to interfere with, such access shall alleviate the Developer from having to fulfill its warranty obligations, and the costs, expenses, liabilities or damages arising out of any unfulfilled Developer warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any in Developer's activities described herein. **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth herein.**

16. **Association as Representative.** Each Association will be the only representative authorized to act on behalf of its members and any other Authorized Users of their members, under this Agreement.

17. **Waiver.** Failure of Developer or any Association to declare any default immediately upon occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but Developer or any Association shall have the right to declare any such default at any time and take such action as might be lawful or authorized thereunder, either in law or in equity.

18. **Notices.** In every instance where it shall be necessary or desirable for the Developer to serve any notice or demand upon Associations, it shall be sufficient:

a. To deliver or cause to be delivered to the Associations at its registered office a written printed copy thereof, in which event the notice or demand shall be deemed to have been served at the time the copy is so delivered; or

b. To send a written or printed copy thereof by United States certified mail, postage prepaid, addressed to the Associations at the Condominium in which event the notice or demand shall be deemed to have been served at the time the copy is deposited in the United States mail, postage prepaid.

{JA333546;1}

19. **Miscellaneous Provisions.**

a. **Subordination and Notice.** By execution hereof, Developer does hereby represent and warrant that at the time of the effective date of this Agreement, there are no mortgages on the Developer Controlled Property or any improvements or fixtures thereof other than as set forth on **Exhibit "C"** attached hereto. Developer, on behalf of itself and its successors and assigns in interest to the Developer Controlled Property, agrees that the rights of the Associations and the Authorized Users to access, use and enjoy the rights set forth in this Agreement, including, but not limited to, all easement rights ("Rights"), shall not be disturbed by Developer whether by ownership interest, lien interest (including any mortgage) or otherwise ("Interests"). All lien creditors of Developer, including but not limited to any mortgagees having a lien on the Developer Controlled Property ("Lender"), who claim any right, title or interest or any other claims to the Developer Controlled Property arising subsequent to the date of this Agreement, all parties of any nature whatsoever claiming any interest in the Developer Controlled Property encumbered by the easements set forth herein, and all successors and assigns of Developer are hereby given notice of the existence of the Rights, and all of their rights and claims with respect to the Developer Controlled Property encumbered by the easements set forth herein.

b. **Lender's Rights.** Notwithstanding anything to the contrary in this Agreement, Developer may encumber its interest in and to the Developer Controlled Property and such Lender shall have the following rights and privileges: (i) Lender may demand and obtain a collateral assignment in and to all or any portion of the rights of Developer under this Agreement as security for the loan and Lender and its successors and assigns shall be entitled to assign their respective rights to any successor or assignee without any of the parties' prior consent; and (ii) the Associations (on behalf of themselves and each applicable Authorized User) must promptly notify Lender of any default of any of Developer's obligations arising with regard to this Agreement and of any act or omission of Developer which would give the other party the right to exercise any of its rights or remedies under this Agreement. In the event of a default by Developer which would give any other party the right, immediately or after the lapse of a period of time, to exercise any of its rights or remedies under this Agreement including, without limitation, its right, if any, to assert a lien for the payment of obligations due under this Agreement, such party shall not exercise such right (i) until it has given written notice of such default, act or omission to Lender; and (ii) unless Lender has failed (x) within thirty (30) days after Lender receives such notice, to cure or remedy provided however, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such thirty (30) day period, such party shall not exercise any such rights if Lender has commenced a cure during such thirty (30) day period and is diligently pursuing such cure. If Lender cannot reasonably remedy a default of Developer until after Lender obtains possession of any portion of the Developer Controlled Property, the affected party shall not exercise its remedies arising from such default until a reasonable time after Lender secures possession of such portion of the Developer Controlled Property. Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default.

{JA333546;1}

c. Non-disturbance. Developer and all Lenders acquiring any interest in the Resort will not use or cause the property encumbered by this Agreement, including, but not limited to, the Developer Controlled Property, to be used in a manner which would prevent or disturb the Authorized Users from using and enjoying the benefits under the terms of this Agreement in a manner contemplated by this Agreement. If Lender (or its nominee or designee) shall succeed to the rights of Developer under this Agreement through a foreclosure action, delivery of a deed (or assignment of this Agreement or any rights herein) in lieu of foreclosure or otherwise, or another person purchases the rights of Developer under this Agreement upon or following foreclosure of Lender's mortgage (or delivery of a deed or assignment of this Agreement in lieu of foreclosure), the owners of any Units in the Condominium Project or Timeshare Resort shall recognize Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, each being a "**Successor-Developer**"), as Developer under this Agreement and shall promptly execute and deliver any instrument that Successor-Developer may reasonably request to evidence such recognition as Developer's successor. Except that Successor-Developer shall not:

(i) be liable for any previous act or omission of Developer under this Agreement unless Developer and Lender were timely given notice of such act or omission and opportunity to cure in accordance with this Agreement;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued against Developer; and

(iii) be bound by any modification of this Agreement unless such modification shall have been expressly approved in writing by Lender.

d. Enforcement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be construed as precluding the enforcement (including, without limitation, foreclosure) of any lien or security interest created by any owner of a Unit in the Condominium Project or Timeshare Resort, in the purchase contract, mortgage or otherwise, which lien or security interest encumbers a Unit. Anything herein to the contrary notwithstanding, in the event that Lender or a Successor-Developer shall acquire title to Developer's interests under this Agreement, Lender and such Successor Developer shall have no obligation, nor incur any liability, beyond Lender's or such Successor Developer's then interest, if any, in the Developer Controlled Property (or any portion thereof) and the parties shall look exclusively to such interest, if any, of Lender or such Successor Developer in the Developer Controlled Property for the payment and discharge of any obligations imposed upon Lender or such Successor Developer hereunder, and Lender and such Successor Developer are hereby released and relieved of any other liability hereunder and under this Agreement. With respect to any money judgment which may be obtained or secured by the Associations (on behalf of themselves or the Authorized Users) against Lender or such Successor Developer, the Associations shall look solely to the estate or interest owned by Lender or such Successor Developer in the Developer Controlled Property, and the Associations will not collect or attempt to collect any such judgment out of any other assets of Lender or such Successor Developer.

{JA333546;1}

Neither Lender nor any Successor Developer shall become liable under this Agreement unless and until such time as they respectively become, and then only for so long as they respectively remain, the owner of any portion of the Developer Controlled Property.

e. Recognition of Rights. So long as Developer or any Successor Developer has any interest in the property which is encumbered by this Agreement, including the Developer Controlled Property, and provided this Agreement is in effect, Developer or any Successor Developer will fully honor all the rights of the Authorized Users, including the Associations, in and to such property and will comply with all other requirements of Utah law and rules promulgated thereunder with respect to the property encumbered by this Agreement, subject to any remedies available due to a default of an Authorized User of its obligations under this Agreement, as amended from time to time.

f. Joinder and Consent. All mortgagees and holders of Interests in and to the property encumbered by this Agreement shall execute a Joinder and Consent to all terms and provisions hereof.

## 20. Miscellaneous Provisions.

a. The terms and provisions set forth in this Agreement shall be deemed to be covenants running with the land, and shall bind all of the parties hereto, as well as their successors in interest, their heirs, administrators and assigns.

b. This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of Utah.

c. All disputes arising out of or under the terms and provisions of this Agreement shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.

d. In the event of any litigation arising out of any of the terms or provisions of this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorneys fees, including all costs and attorneys fees incurred on any appeal.

e. This Agreement represents the entire agreement between the parties and may only be amended or modified by another Agreement signed by the party intended to be bound. No amendment of this Agreement shall be enforceable unless such amendment has been consented to by Lender in writing.

**f. ANY CONTROVERSY ARISING OUT OF OR RELATING TO THIS DECLARATION WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND, THEREFORE, THE DEVELOPER AND EACH UNIT OWNER AGREE THAT ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE**

{JA333546;1}

Shared Use Agreement

15

**TRIED BY A JUDGE SITTING WITHOUT A JURY, AND UNIT OWNER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY SUCH PROCEEDING.**

21. **Term.** This Agreement shall be effective upon its recordation in the Public Records of Summit County, Utah, and shall continue in full force and effect and shall run concurrently with the existence of the Condominium and the Timeshare Resort and shall terminate upon the later termination of the Condominium or the Timeshare Resort as provided pursuant to their Declarations.

22. **Covenant Running with the Land.** The rights, easements, obligations and agreements set forth herein shall be a covenant running with the properties described herein upon the Associations and its members and the Developers and their respective successors, assigns, licensees, grantees and designees and such rights, easements, agreements and maintenance obligation shall be enforceable in law or equity.

{JA333546;1}

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the date and year first above written.

Signed, Sealed and Delivered  
in the Presence of:

Pattiecia Aloha  
Print Name: Pattiecia Aloha  
JOANN D. MANKAMYER  
Print Name: JOANN D. MANKAMYER

THE LODGE AT WESTGATE PARK CITY RESORT  
& SPA CONDOMINIUM ASSOCIATION, INC., a Utah  
non-profit corporation

BY: David A Siegel  
Name: David A Siegel  
Title: President

Patricia Aloha  
Print Name: Patricia A. Gahan  
Joann D. Mankamer  
Print Name: JOANN D MANKAMYER

WESTGATE PARK CITY RESORT & SPA OWNERS  
ASSOCIATION, INC., a Utah non-profit corporation

Patricia Alahan  
Print Name: Patricia Alahan  
Joann D. Mankamer  
Print Name: JOANN D MANKAMAYER

WESTGATE RESORTS, LTD., a Florida limited  
partnership

BY: WESTGATE RESORTS, INC., a Florida corporation, General Partner

BY: Spud A Siegel  
Name: Spud A Siegel  
Title: President

STATE OF Florida )  
COUNTY OF Orange ) SS.

The foregoing instrument was acknowledged before me this 17 day of August, 2007  
by David A Siegel, as President of THE LODGE AT WESTGATE PARK CITY  
RESORT & SPA CONDOMINIUM ASSOCIATION, INC., a Utah non-profit corporation, on behalf of the  
corporation. He is personally known to me or has produced Driver's License as a type of  
identification.



My commission expires.

Print Name: \_\_\_\_\_  
Notary Public, State of: \_\_\_\_\_  
Serial Number, if any: \_\_\_\_\_

{JA333546;1}

## Shared Use Agreement

STATE OF Florida )  
COUNTY OF Orange ) SS.

The foregoing instrument was acknowledged before me this 16th day of August, 2007 by David A. Sigal, as President of WESTGATE PARK CITY RESORT & SPA OWNERS ASSOCIATION, INC., a Utah non-profit corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as a type of identification.



My commission expires:

Patricia A. Cohan  
Print Name:  
Notary Public, State of: \_\_\_\_\_  
Serial Number, if any: \_\_\_\_\_

STATE OF FLORIDA )  
COUNTY OF Orange ) SS.

The foregoing instrument was acknowledged before me this 16th day of August, 2007 by David A. Sigal, as President, of WESTGATE RESORTS, INC., a Florida corporation, as General Partner of WESTGATE RESORTS, LTD., a Florida limited partnership, on behalf of the partnership. He is personally known to me or has produced \_\_\_\_\_ as a type of identification.

Patricia A. Cohan  
Print Name:  
Notary Public, State of: \_\_\_\_\_  
Serial Number, if any: \_\_\_\_\_

My commission expires:



(JA333546;1)

EXHIBIT "A"

MASTER PARCEL

{JA333546;1}

Shared Use Agreement  
19

Beginning at the Southeast Corner of Section 36, Township 1 South, Range 3 East, Salt Lake Base and Meridian, a found brass cap; thence North 89°59'43" West a distance of 1328.95 feet along the South Line of said Section 36, (Basis of Bearing being North 89°59'43" West along the South Line of said Section 36 between the Southeast Corner and South Quarter Corner of said Section 36); thence leaving said Section Line North a distance of 129.02 feet to a point on the west side of the designed location of the top back of curb of the proposed High Mountain Road, said point being the true Point of Beginning; thence leaving said top back of curb North 47°29'38" West a distance of 235.63 feet; thence North 74°29'38" West a distance of 113.25 feet; thence North 15°30'22" East a distance of 1.50 feet; thence North 74°29'38" West a distance of 30.50 feet; thence South 80°30'22" West a distance of 6.00 feet; thence South 50°30'22" West a distance of 11.75 feet; thence North 74°29'38" West a distance of 5.00 feet; thence North 29°29'38" West a distance of 20.00 feet; thence North 74°29'38" West a distance of 10.50 feet; thence North 29°29'38" West a distance of 18.00 feet; thence North 15°30'22" East a distance of 17.77 feet; thence North 29°29'36" West a distance of 258.66 feet; thence North 60°30'24" East a distance of 109.66 feet; thence North 29°29'36" West a distance of 120.00 feet; thence North 60°30'24" East a distance of 104.67 feet; thence southwest side of the designed location of the top back of curb of the proposed Grand Summit Drive; thence continuing along said top back of curb the following eight courses: 1) South 31°03'19" East a distance of 8.51 feet to a point of curve to the left having a radius of 60.00 feet and a central angle of 58°55'54"; 2) thence curve to the right having a radius of 22.50 feet and a central angle of 2.24 feet to a point of the arc a distance of 61.71 feet; 3) South 89°59'12" East a distance of 2.24 feet to a point of curve to the left having a radius of 35.34 feet; 5) South 00°00'47" West a distance of 71.24 feet to a point of curve to the left of 163.77 feet; 7) South 81°34'44" East a distance of 18.12 feet to a point of curve to the right having a radius of 22.50 feet and a central angle of 27°01'36"; 8) thence easterly along the arc a distance of 10.61 feet to a left, of which the radius point lies South 85°56'44" East a radial distance of 224.00 feet; thence southerly along the arc of said curve and said right of way, through a central angle of 51°34'32" a distance of 201.64 feet; thence continuing along said Right of Way South 47°31'16" East a distance of 202.65 feet to the point of curve of a non tangent curve to the right, of which the radius point lies North 84°23'02" West a radial distance of 25.00 feet; said point being on the west side of the said top back of curb of the said High Mountain Road; thence continuing southwesterly along said top back of curb and arc, through a central angle of 36°51'46" a distance of 16.08 feet; thence continuing along said top back of curb South 42°28'44" West a distance of 217.19 feet to the Point of Beginning.

Said property also known as Parcel 1, Westgate At The Canyons Final Subdivision Plat, according to the official plat thereof on file and of record in the Summit County Recorders Office.

EXHIBIT "B"

DEVELOPER CONTROLLED PROPERTY

X:\Real\43035\197847\JA333546.DOC  
K:\Pati\canyons\park city condo\shared use agmt\13 shared use agmt 08.01.07.DOC

{JA333546;1}

Shared Use Agreement  
20

Beginning at the Southeast Corner of Section 36, Township 1 South, Range 3 East, Salt Lake Base and Meridian, a found brass cap; thence North 89°59'43" West a distance of 1328.95 feet along the South Line of said Section 36, and South Quarter Corner of said Section 36); thence leaving said Section Line North a distance of 129.02 feet to a point on the west side of the designed location of the top back of curb of the proposed High Mountain Road, of 235.63 feet; thence North 74°29'38" West a distance of 113.25 feet; thence North 15°30'22" East a distance of 1.50 feet; thence North 74°29'38" West a distance of 30.50 feet; thence South 80°30'22" West a distance of 6.00 feet; thence South 50°30'22" West a distance of 11.75 feet; thence North 74°29'38" West a distance of 5.00 feet; thence North 29°29'38" West a distance of 20.00 feet; thence North 74°29'38" West a distance of 10.50 feet; thence North 29°29'38" West a distance of 18.00 feet; thence North 15°30'22" East a distance of 17.77 feet; thence North 29°29'38" West a distance of 258.66 feet; thence North 60°30'24" East a distance of 109.66 feet; thence North 29°29'36" West a distance of 120.00 feet; thence North 60°30'24" East a distance of 104.67 feet; thence North 29°29'36" West a distance of 15.00 feet; thence North 60°30'24" East a distance of 101.23 feet to the southwest side of the designed location of the top back of curb of the proposed Grand Summit Drive; thence continuing along said top back of curb the following eight courses: 1) South 31°03'19" East a distance of 8.51 feet to a point of curve to the left having a radius of 60.00 feet and a central angle of 58°55'54"; 2) thence curve to the right having a radius of 61.71 feet; 3) South 89°59'12" East a distance of 2.24 feet to a point of the arc a distance of 35.34 feet; 4) thence southeasterly along having a radius of 115.00 feet and a central angle of 81°35'31"; 5) South 00°00'47" West a distance of 71.24 feet to a point of curve to the left of 163.77 feet; 7) South 81°34'44" East a distance of 18.12 feet to a point of curve to the right having a radius point on the proposed The Canyons Resort Drive Right of Way and point of curve of a non tangent curve to the left, of which the radius point lies South 85°56'44" East a radial distance of 224.00 feet; thence southerly along the arc of said curve and said right of way, through a central angle of 51°34'32" a distance of 201.64 feet; thence continuing along said Right of Way South 47°31'16" East a distance of 202.65 feet to the point of curve of feet; said point being on the west side of the said top back of curb of the said High Mountain Road; thence continuing southwesterly along said top back of curb and arc, through a central angle of 36°51'46" a distance of 16.08 feet; thence continuing along said top back of curb South 42°28'44" West a distance of 217.19 feet to the Point of Beginning.

Said property also known as Parcel 1, Westgate At The Canyons Final Subdivision Plat, according to the official plat thereof on file and of record in the Summit County Recorders Office.

#### LESS AND EXCEPTING FROM THE ABOVE LEGAL DESCRIPTION (BUILDING 10):

Commencing at the Southeast Corner of Section 36, Township 1 South, Range 3 East, Salt Lake Base & Meridian, a found brass cap, (basis of bearing being North 89°59'43" West 2657.10 feet between the said Southeast Corner of Section 36 and the South Quarter Corner of said Section 36, a found brass cap); thence along the South Line of said 390.48 feet to the Point of Beginning; thence North 29°30'00" West, a distance of 238.67 feet; thence North 60°30'00" East, a distance of 77.67 feet thence South 29°30'00" East, a distance of 123.33 feet; thence North 60°30'00" East, a distance of 7.67 feet thence South 29°30'00" East, a distance of 40.00 feet thence South 60°30'00" West, a distance of 77.67 feet; thence South 29°30'00" East, a distance of 75.33 feet; thence South 60°30'33" West, a distance of 77.67 feet to the Point of Beginning.

#### ALSO LESS AND EXCEPTING (BUILDING 11):

Commencing at the Southeast Corner of Section 36, Township 1 South, Range 3 East, Salt Lake Base & Meridian, a found brass cap, (basis of bearing being North 89°59'43" West 2667.10 feet between the said Southeast Corner of Section 36 and the South Quarter Corner of said Section 36, a found brass cap); thence North 89°59'43" West, a distance of 1,571.00 feet along the South Line of said Section 36; thence leaving said Section Line, North, a distance of 589.67 feet to the Point of Beginning; thence North 29°30'00" West, a distance of 166.00 feet; thence South 60°30'00" West, a distance of 94.00 feet; thence North 29°30'00" West, a distance of 77.67 feet; thence North 60°30'00" East, a distance of 131.67 feet; thence South 29°30'00" East, a distance of 15.00 feet; thence North 60°30'00" East, a distance of 30.00 feet; thence South 29°30'00" East, a distance of 228.67 feet; thence South 60°30'00" West, a distance of 67.67 feet to the Point of Beginning.

#### Bison Lodge

Beginning at a point N89°59'43" W 1347.95 feet along the Section Line and North 147.79 feet from the Southeast Corner of Section 36, Township 1 South, Range 3 East, Salt Lake Base and Meridian; and running thence N47°29'38" W 190.67 feet; thence N42°30'23" E 83.00 feet; thence S47°29'45" E 109.00 feet; thence N42°29'49" E 121.02 feet; thence S47°29'37" E 81.70 feet; thence S42°30'37" W 204.01 feet to the point of beginning.

#### Moose Lodge

Beginning at a point N89°59'43" W 1488.51 feet along the Section Line and North 276.60 feet from the Southeast Corner of Section 36, Township 1 South, Range 3 East, Salt Lake Base and Meridian; and running thence N47°29'38" W 20.76 feet; thence N74°29'38" W 112.60 feet; thence N15°40'46" E 82.67 feet; thence S74°29'44" E 91.72 feet; thence N15°30'22" E 121.33 feet; thence S74°29'33" E 80.00 feet; thence S15°30'30" W 141.10 feet; thence N47°29'45" W 3.58 feet; thence S42°30'23" W 83.00 feet to the point of beginning.